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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/065,120

09/18/2002

Scott C. Harris

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06/11/2009

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EXAMINER

ISSING, GREGORY C

ART UNIT

PAPER NUMBER

3662

MAIL DATE

DELIVERY MODE

06/11/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Communication Re: Appeal	Application No.	Applicant(s)	
	10/065,120	HARRIS, SCOTT C.	
	Examiner	Art Unit	
	Gregory C. Issing	3662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☒ other: See Continuation Sheet.
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

/Gregory C. Issing/
Primary Examiner
Art Unit: 3662

Continuation of 3. (d) Other: The Appeal Brief 4/6/09 is untimely and there are no extension of fees filed. The 6 month statutory period for response has since expired and the application is now abandoned. The original notice of defective appeal brief was mailed on 12/2/08 indicating that to avoid dismissal of appeal, applicant must file an amended brief or other appropriate correction within ONE MONTH or THIRTY DAYS from the mailing date of the Notification, whichever is longer. EXTENSIONS OF THE TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136. The Office received the amended brief dated 01 January 2009. However, this amended brief did not fully comply with the notice of defective appeal brief dated 12/2/08. Therefore, the period for response continued to run from the mailing date of the defective appeal brief notice of 12/2/08. Applicant was notified in the subsequent notice of defective appeal brief dated 4/6/09 that the period for response continued to run from the mailing date of the 12/2/08 notice of defective appeal brief. Applicant subsequently filed another amended appeal brief on 4/9/09. However, this appeal brief is still not acceptable because no extension of time was filed from the date of the 12/2/08 defective notice. In addition, the appeal brief received on 4/6/09 remains defective because there are no headings for each of the grounds of rejection listed on page 9 of the 4/6/09 brief. MPEP 1205.02 requires: Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. The failure of appellant to separately argue claims which appellant has grouped together constitutes a waiver of any argument that the Board must consider the patentability of any grouped claim separately. See *In re McDaniel*, 293 F.3d 1379, 1384, 63 USPQ2d 1462, 1465-66 (Fed. Cir. 2002). Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. The appeal is dismissed in accordance with MPEP 1205.03: "The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified."